

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 2.59.301, 2.59.302, and 2.59.308)	ON PROPOSED AMENDMENT
pertaining to the regulation of consumer)	AND ADOPTION
loan licensees and the proposed)	
adoption of NEW RULES I through VII)	
regarding notification to the department,)	
examinations, suspension, and)	
revocation of licenses, protection of)	
confidential borrower information,)	
application procedure required to engage)	
in consumer lending, default, and accrual)	
of interest or amortization of net fees or)	
costs)	

TO: All Concerned Persons

1. On October 11, 2007, at 2:00 p.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on October 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.59.301 ADVERTISING (1) through (4) remain the same.

(5) Licensees conducting business through the Internet shall display, on a nonbypassable web page on its web site, its Montana license authorizing consumer lending, and the fee schedule filed with the department. The web pages shall be displayed before a borrower may continue on to the application web page.

AUTH: 32-5-401, MCA

IMP: 32-5-401, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.301 to ensure that the schedule of charges be properly displayed to borrowers who

obtain consumer loans via the Internet. This schedule of charges must be disclosed to the borrower before they complete the loan transaction. Conducting business via the Internet has become more prevalent within the industry of consumer lending.

2.59.302 SCHEDULE OF CHARGES (1) through (8) remain the same.

(9) Licensees shall interpret ~~32-5-201(6), MCA of the Act~~ "once and no more" "only once" to mean on the same default; i.e., a borrower who defaults in one or more payments may be subject to a penalty of 5% of each payment in default.

(10) remains the same.

AUTH: 32-5-401, MCA

IMP: 31-1-106, 32-5-301(6), MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.302 in order to maintain consistent language with 32-9-301, MCA. In addition, 32-5-201(6), MCA, has been deleted from the Montana Consumer Loan Act.

2.59.308 EXAMINATION FEES (1) A consumer loan ~~business licensee~~ shall pay the Division of Banking and Financial Institutions an examination fee at a rate equal to the department's actual costs for examiner wages and travel expenses in the amount of \$300 a day for each examiner required to conduct an investigation or examination under 32-5-402 or 32-5-403, MCA.

(2) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the consumer loan lender may be suspended or revoked until the fees are paid.

AUTH: 32-5-401, 32-5-403, MCA

IMP: 32-5-402, 32-5-403, MCA

REASON: It is reasonably necessary for the division to amend ARM 2.59.308 to ensure that the cost of an examination be commensurate with the division's expenses in completing such examinations. The expenses include the cost of examiner wages and travel. This proposed method of billing will ensure that actual time allocated to the completion of an exam be included in the examination fee. The division expects that the proposed rate may decrease examination costs for some licensees since the current rate is \$300 a day for each examiner. This current rate does not provide for an allocation of examiner time less than a day. The proposed rate will factor actual time in a manner which will account for examiner hours dedicated to the completion of an exam. The division expects that the proposed rate may increase examination costs for some licensees since the completion of some exams will require more time allocated by the examiners. The financial impact of this proposed new rule is not known at this time. There are several variables, which will affect the proposed rate. These variables include differences among actual examiner wages, the distance in traveling to an exam, and the cost of lodging. The division anticipates that it will complete an average of 96 exams each year. It is reasonably necessary for the division to propose section (2) to ensure that a consumer loan licensee remits payment for examinations conducted by the division

in a timely manner. The division is authorized to charge an examination fee to licensees pursuant to 32-5-403, MCA.

4. The proposed new rules provide as follows:

NEW RULE I NOTIFICATION TO THE DEPARTMENT (1) The licensee shall immediately notify the department of:

- (a) a change in the physical location of the office;
- (b) any change in the phone number of the business;
- (c) a change in the nature of the business;
- (d) a change in the board of directors or the principal officers;
- (e) a change in the share ownership of the company that could affect control;
- (f) the acquisition or disposition of another company;
- (g) any civil action involving fraud or dishonesty filed against the licensee;
- (h) any criminal charge filed against the licensee;
- (i) any change which would cause the department not to issue a license, if it had occurred before licensure; and
- (j) the addition of other business to be conducted at the location.

AUTH: 32-5-401, MCA

IMP: 32-5-201, 32-5-202, 32-5-203, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE I to ensure that the information related changes in a licensee's ownership, business operations, contact information, and fitness and character are immediately reported to the division. This immediate reporting is reasonably necessary given that this information is critical to the daily operations and financial stability of a licensee.

NEW RULE II EXAMINATIONS (1) Upon receiving a complaint or at its own discretion, the department may examine any office, place of business, or location where records may be found of any licensee or person who may be in violation of Title 32, chapter 5, parts 1 through 5, MCA, or these rules.

(2) The department shall examine for compliance with the applicable state and federal law and all rules adopted thereunder.

(3) At the end of an examination, the department shall provide the examinee with an oral and written report which details the areas examined and any deficiencies found.

AUTH: 32-5-401, MCA

IMP: 32-5-402, 32-5-403, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE II in order to clarify its authority and procedure in conducting examinations of licensed consumer loan lenders. This authority and discretion to conduct these examinations is specifically authorized under 32-5-403, MCA.

NEW RULE III SUSPENSION AND REVOCATION OF LICENSES (1) The department may suspend or revoke a license of an entity that does not correct the deficiencies found by the department after an examination within the time frame granted by the department.

AUTH: 32-5-401, MCA

IMP: 32-5-402, 32-5-403, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE III to ensure that licensees comply with the findings set forth with an examination. It is reasonably necessary that the division suspend or revoke a license if a consumer loan lender does not take action to correct deficiencies identified in an examination.

NEW RULE IV PROTECTION OF CONFIDENTIAL BORROWER INFORMATION (1) All licensees shall adopt, implement, and ensure compliance with guidance addressing safeguarding, proper destruction, and breach of confidential borrower information as required by:

(a) Title 30, chapter 14, part 17, MCA; and

(b) 16 CFR 314, as those rules were published in the May 23, 2002, Federal Register at 67 FR 36493 which are adopted and incorporated by reference. Copies are available from the Division of Banking and Financial Institutions, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) Any violation of this rule is grounds for fines, suspension, or revocation of license.

AUTH: 32-5-401, MCA

IMP: 32-5-307, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE IV in order to ensure that licensees safeguard customer information. This new rule will require licensees to properly dispose of this information so that a customer's personal information is not compromised. NEW RULE IV affords greater protection to borrowers and sets forth that violation of this rule is grounds for enforcement action.

NEW RULE V APPLICATION PROCEDURE REQUIRED TO ENGAGE IN CONSUMER LENDING (1) An application must be in writing on a form prescribed by the department and verified under oath. Application forms are available from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) In addition to any other information that may be required by 32-5-201, MCA, the application shall contain the following information in the application format prescribed by the department:

(a) biographical data concerning the applicant, the applicant's owners, parent company, affiliates, or subsidiaries as specified by the department;

(b) information concerning the applicant's character, experience, and qualifications; and

(c) financial information about the applicant.

AUTH: 32-5-401, MCA

IMP: 32-5-201, MCA

REASON: It is reasonably necessary that the division propose NEW RULE V in order to set forth the requirements of an application for a consumer loan license. It is reasonably necessary that the application contain information identified in section (2) in order for the division to conduct a thorough review of the applicant's background, management, and financial viability.

NEW RULE VI DEFAULT (1) Default occurs when a borrower has not met its legal obligations according to the loan agreement, e.g., has not made a scheduled payment or violated a condition of the loan agreement. Default may occur if the borrower is either unwilling or unable to pay their debt. Default does not include bankruptcy.

AUTH: 32-5-401, MCA

IMP: 32-5-102, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE VI in order to clarify the term default, which is identified in the Montana Consumer Loan Act. Default by a borrower triggers remedies for a lender up to and including civil action. Delays in classifying a loan in default results in adverse financial effects to borrowers as well as distorts the lender's financial status.

NEW RULE VII ACCRUAL OF INTEREST OR AMORTIZATION OF NET LOAN FEES OR COSTS (1) A licensee shall not accrue interest or amortize deferred net loan fees or costs on any asset:

(a) upon which principal or interest has been in default for a period of 60 days or more unless the asset is both well secured and in the process of collection; or

(b) for which payment in full of principal or interest is not expected.

(2) An asset is "well secured" if it is secured by collateral in the form of liens on or pledges on real or personal property that have a realizable value sufficient to discharge the debt (including accrued interest) in full.

(3) An asset is "in the process of collection" if collection of the asset is proceeding in due course either:

(a) through legal action, including judgment enforcement procedures; or

(b) in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future.

(4) The date on which an asset reaches nonaccrual status is determined by its contractual terms. If the principal or interest on an asset becomes due and unpaid for 60 days or more on a date that falls between report dates, the asset should be placed in nonaccrual status as of the date it becomes 60 days past due

and should remain in nonaccrual status until it meets the criteria for restoration to accrual.

AUTH: 32-5-401, MCA

IMP: 32-5-301, MCA

REASON: It is reasonably necessary for the division to propose NEW RULE VII in order to minimize damage to the defaulting party and reflect the accurate financial status of a lender.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than October 19, 2007.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Hal Jacobson, the primary bill sponsor of HB 141 (2007), was notified on July 27, 2007, by regular mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State September 10, 2007.